

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

VISIBLE SYSTEMS CORPORATION,

Plaintiff

v.

UNISYS CORPORATION,

Defendant

Civil Action No. 04-CV-11610-RGS

**JUDGMENT**

This cause having come before the Court for trial by jury on July 23, 2007; Stephen H. Galebach having appeared for the plaintiff; Anthony Doniger and William Boesch having appeared for the defendant; and the jury having heard the testimony of witnesses and the arguments of counsel, and having examined the exhibits submitted into evidence, and having rendered its verdict by answers to special questions, to wit:

A. That plaintiff Visible Systems Corporation established a right to a trademark in the word VISIBLE.

B. That plaintiff Visible Systems Corporation established that the Unisys 3D VISIBLE ENTERPRISE mark is substantially similar to Visible Systems' VISIBLE mark.

C. That plaintiff Visible Systems Corporation established the likelihood that its potential customers have been or will be confused into mistakenly believing that Unisys Corporation is the source or sponsor of Visible Systems' products and/or services.

D. That defendant Unisys Corporation's infringement of the VISIBLE mark caused harm to plaintiff Visible Systems Corporation in the form of lost profits or other monetary damages in the amount of Two Hundred Fifty Thousand Dollars (\$250,000.00).

E. That defendant Unisys Corporation's infringement of Visible Systems' mark was willful.

NOW THEREFORE, based upon said verdict, it is ORDERED, ADJUDGED and DECREED that plaintiff shall take judgment against defendant, and further that:

1. This Court has jurisdiction over the parties and the subject matter.
2. Plaintiff's Trademark Registrations Nos. 1,371,050, 2,517,235, and 2,546,919 are good and valid in law.
3. Insofar as defendant has asserted a counterclaim against plaintiff for cancellation of any of plaintiff's registered marks, including plaintiff's Trademark Registrations Nos. 1,371,050, 2,517,235, and 2,546,919, said counterclaim of defendant is DENIED.
4. Defendant has infringed upon the above identified trademark registrations of plaintiff by selling, offering for sale, distributing and advertising consulting services, training, and products in the fields of information technology, enterprise architecture modeling, and computer programs for database and application development, throughout the United States, and has engaged in acts of unfair competition against plaintiff.
5. Defendant's trademark application for 3D VISIBLE ENTERPRISE serial no. 78395259 is declared non-registrable and subject to cancellation.
6. As the jury has rendered an award of money damages in the amount of Two Hundred Fifty Thousand Dollars (\$250,000.00), judgment is hereby entered in favor of plaintiff Visible Systems Corporation and against defendant Unisys Corporation in the amount of Two Hundred Fifty Thousand Dollars (\$250,000.00).
7. Defendant and each of its officers, agents and servants, and employees, and all persons in active concert or participation with them, are hereby forever enjoined from:
  - a. using the mark "3D Visible Enterprise" or its abbreviation "3D-VE";

b. using any mark or any product or service name or designation containing or including the word “Visible” or using the word “Visible” as part of any advertising or marketing phrase or slogan referring to any such product or service; and

c. using the term "visible" in connection with enterprise architecture modeling services or products, as opposed to ordinary descriptive uses of the term "visible" that were identifiable in the relevant market before defendant’s infringement began on June 17, 2004,

in the fields of information technology, enterprise architecture modeling, and computer programs for database and application development, including configuration management, data warehousing, object, data, and process modeling, at any place in the United States, or on any website accessible via the Internet from any computer in the United States, or as any metatags or other search-related devices or terms associated with any such website.

8. Defendant is ordered to deliver to plaintiff’s attorney within thirty (30) days after issuance of this Judgment, to be impounded or destroyed by plaintiff, all signs, labels, packages, wrappers, sales and marketing and promotional literature and items, and advertisements and all artwork associated therewith, whether in written, printed or electronic form, bearing the “3D Visible Enterprise” mark or using the word “Visible” as part of any mark, title or slogan.

9. Within thirty (30) days after issuance of this Judgment, defendant is required to file with the Clerk of this Court and serve on plaintiff a report in writing, under oath, setting forth in detail the manner and form in which defendant has complied with the foregoing injunction.

10. The Court hereby schedules a trial/hearing to ascertain the amount of defendant’s profits to be recovered from defendant by reason of its willful infringement of plaintiff’s said trademarks and unfair competition, to be held on: \_\_\_\_\_.

11. The Court hereby, upon consideration of plaintiff's appeal of the Magistrate Judge decision of July 12, 2007 in this action upon Plaintiff's Emergency Motion for Enforcement of Discovery Order, Impose Sanctions, and Shorten Defendant's Time to Respond, of July 9, 2007, orders that Relief and Sanctions Requested Nos. 2 through 15 of said Motion are hereby granted, and the parties shall complete all steps necessary to comply therewith by not later than 120 days after the date of this Judgment, and 30 days prior to the date set forth in paragraph 10 above.

12. Plaintiff shall recover against defendant its costs. Plaintiff shall within thirty (30) days after entry of this judgment file with this Court an itemized statement of such costs. The Clerk shall enter judgment in favor of plaintiff and against defendant in the amount of such costs.

13. As this Court finds that defendant's willful infringement of plaintiff's said trademarks, in light of the registration of plaintiff's marks, the long-established reputation and goodwill related to plaintiff's marks, and the facts and circumstances of the litigation, constitutes extraordinary circumstances justifying the award of attorneys fees, plaintiff shall recover against defendant its attorneys' fees in an amount to be determined by this Court. Plaintiff shall within thirty (30) days after entry of this Judgment file with this Court an itemized statement of said attorneys' fees.

14. As the jury has rendered an award of money damages in the amount of Two Hundred Fifty Thousand Dollars (\$250,000.00) and as this Court finds that defendant's willful infringement of plaintiff's said trademarks, in light of the overall circumstances of the case, warrants the trebling of said amount, the Court hereby enters judgment in favor of plaintiff Visible Systems Corporation and against defendant Unisys Corporation in the additional amount of Five Hundred Thousand Dollars (\$500,000.00).

Dated:

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Richard G. Stearns  
United States District Judge